

**EXHIBIT D**  
**TO THE DECLARATION OF JOSEPH V. WILLEY**

**N.Y. EDUC. DEP'T, PROVISION OF SERVICES TO  
STUDENTS WITH DISABILITIES DURING  
STATEWIDE SCHOOL CLOSURES DUE TO NOVEL  
CORONAVIRUS (COVID-19) OUTBREAK IN NEW  
YORK STATE & TOPIC QUESTIONS AND  
ANSWERS (Mar. 27, 2020)**



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March 27, 2020

**TO:** School District Superintendents  
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BOCES District Superintendents  
School District Business Officers  
Charter School Leaders  
Special Education Directors  
Directors of Pupil Personnel Services  
Chairpersons of Committees on Special Education  
Chairpersons of Committees on Preschool Special Education  
Administrators of Nonpublic Schools with Approved Special Education Programs  
Organizations, Parents and Individuals Concerned with Special Education  
Preschool Providers of Special Education Programs and Services  
Superintendents, Special Act School Districts  
Superintendents, State-Operated Schools  
Superintendents, State-Supported Schools

**FROM:** Christopher Suriano, Assistant Commissioner

**RE:** Provision of Services to Students with Disabilities During Statewide School Closures Due to Novel Coronavirus (COVID-19) Outbreak in New York State

**Purpose/Background**

The NYS Education Department (NYSED) recognizes the exceptional and unprecedented challenges that students, their families, and school communities are facing right now. School districts across the State are working tirelessly to provide continuity and support to address the special needs of students with disabilities including English Language Learners with disabilities. We greatly appreciate those efforts and encourage parents, educators, and administrators to continue working together to meet the special needs of these students.

Students with disabilities must be provided a free appropriate public education (FAPE) consistent with the need to protect their health and safety, as well as the health and safety of the individuals who provide them with their education, specialized instruction, and related services. NYSED will allow school districts as much flexibility as federal and State laws and regulations allow in determining how FAPE is to be provided during the

Coronavirus outbreak, and we will continue to seek further guidance regarding additional flexibility during this pandemic.

With school closures and the inevitable delays in providing services and making decisions regarding these services, all school districts should establish mechanisms for communicating regularly with staff, students, families, and impacted communities in the language or mode of communication they best understand regarding the provision of services to students with disabilities to meet the requirements of the Individuals with Disabilities Education Act (IDEA).

The attached “Questions and Answers” document is NYSED’s most-up-to date guidance regarding the provision of services to students with disabilities, including English Language Learners with disabilities. The Department’s Office of Special Education will continue to provide updated guidance to the field.

School districts should also be informed by the resources provided by the U.S. Department of Education (USDE) Office of Special Education Programs (OSEP) and Office for Civil Rights (OCR) regarding the provision of services to students with disabilities during the Coronavirus outbreak. Following are important resources to be aware of:

- [Questions and Answers on Providing Services to Children with Disabilities During the COVID-19 Outbreak](#)
- [Protecting Student Privacy: FERPA and the Coronavirus](#)
- [Joint Webinar on COVID-19](#) (March 13, 2020) with OSEP, Council of Administrators of Special Education, Council of Chief State School Officers, National Association of State Directors of Special Education
- [Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#)
- [OCR Short Webinar on Online Education and Website Accessibility](#)
- [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#)

We also recommend that you frequently check the [NYS Department of Health \(DOH\) Novel Coronavirus webpage](#) and [NYSED’s COVID-19 website for updates](#).

Attachment: Provision of Services to Students with Disabilities During Statewide School Closures Due to Novel Coronavirus (COVID-19) Outbreak in NYS Topical Questions and Answers (March 27, 2020)

# **PROVISION OF SERVICES TO STUDENTS WITH DISABILITIES DURING STATEWIDE SCHOOL CLOSURES DUE TO NOVEL CORONAVIRUS (COVID-19) OUTBREAK IN NEW YORK STATE**

## **Topic Questions and Answers March 27, 2020**

### **Implementation of Special Education Services**

- 1. Pursuant to [Executive Order 202.4](#), school districts are required to establish a COVID-19 closure plan for alternative instructional options (electronic and non-electronic). Are school districts required to continue to provide a free appropriate public education (FAPE) to students with disabilities?**

Yes. School districts must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's individualized education program (IEP). However, FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students. During this emergency, schools may not be able to provide all services in the same manner they are typically provided. For additional information, please see [Questions And Answers On Providing Services To Children With Disabilities During The Coronavirus Disease 2019 Outbreak - March 2020](#).

In its March 21, 2020 guidance titled [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#), the U.S. Department of Education (USDE) encouraged schools and parents to collaborate creatively to continue to meet the needs of students with disabilities and consider practices such as distance instruction, teletherapy and tele-intervention, meetings held on digital platforms, secure online options for data tracking, and documentation. Additionally, that guidance indicated the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.

In planning for continuity of learning, school districts must consider ways of ensuring that the planned activities are accessible to students with disabilities, including English Language Learners with disabilities. Consideration should be given to including strategies to ensure that students with disabilities have equal access to the continuity of learning and receive educational benefits that are comparable to those received by others in the program and modified, or separate, aids and services necessary to provide access to students with disabilities. Where technology itself imposes a barrier to access or where educational materials simply are not available in an accessible format, educators may still meet their legal obligations by providing children with disabilities equally effective alternate access to the curriculum or services provided to other students.

**ATTACHMENT****2. What resources are available to help school districts provide continuity of learning to students with disabilities during a pandemic such as the Coronavirus?**

Accessible technology may afford students with disabilities an opportunity to have access to high-quality educational instruction during an extended school closure, especially when continuity of learning is provided through distance learning. For those students with IEPs that include the use of assistive technology in school and home, it would be appropriate to continue to utilize assistive technology as part of continuity of learning.

Care should be taken to ensure that school websites are free of barriers that make accessing content and materials difficult for some students with disabilities, including English Language Learners with disabilities. For example, the use of visual depictions should be limited, or accessible captions and labels used, to improve access for students with visual impairments. The [Web Accessibility Initiative website](#) and the [U.S. Department of Justice's ADA website](#) provide additional information regarding website modifications and information technology standards designed to support individuals with disabilities.

To assist in the use of assistive technology for students with disabilities, the following online resources are available:

- [Center on Online Learning and Students with Disabilities website](#) provides information and resources regarding how online learning can be made more accessible, engaging, and effective for K-12 learners with disabilities by investigating approaches that address learner variability within the range of conditions under which online learning occurs.

The Center on Online Learning and Students with Disabilities has posted a statement on its website indicating that it is working on tips and strategies to support teachers, parents, and the students in a virtual environment in light of the shift to increased K-12 online instruction resulting from the COVID-19 outbreak. The statement also indicates that people may check its website periodically for tips and ideas.

- [Center on Technology and Disability website](#) provides free, high-quality resources and events on all aspects of assistive technology for families, teachers, providers, and administrators.
- [Center for Applied Special Technology website](#) works to expand learning opportunities for all individuals through Universal Design for Learning.
- [National Center on Accessible Educational Materials website](#) provides resources and technical assistance on accessible educational materials.
- [Quality Indicators for Assistive Technology \(QIAT\)](#) provides Quality Indicators for Assistive Technology Services and supporting documents. QIAT also offers forums for participation and discussion with colleagues in the QIAT community related to assistive technology.

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- The [National Center on Disability and Access to Education website](#) provides information, resources and tools to address issues of technology and disability in education policies and practices.
- [NYSED webpage on Accessible Instructional Materials \(AIM\)](#) provides information on accessing AIM throughout the National Instructional Materials Access Center (NIMAC), as requested by a school district.
- [Bookshare is an e-book library](#) with the most extensive collection of accessible ebooks in the world.
- The [Learning Ally website](#) provides multi-sensory reading accommodation that levels the playing field for students who struggle to read due to a reading deficit.
- The [Common Sense Education website](#) supports K–12 schools with everything educators related to digital learning. Resources on assistive technology and accessibility tools are available, as well.
- [NYSED's Resource Center for the Visually Impaired](#), located at NYS School for the Blind, provides large print literature, adapted assessments and curricula, descriptive (voice captioned) videos for students, educational videos, and professional reference materials regarding students who are blind and visually impaired, including those with multiple disabilities.

**3. If a school district is using virtual online learning during a school closure, will students' IEPs have to be amended?**

No. Guidance provided by OSEP during the March 13, 2020 [Joint Webinar on COVID-19](#) with OSEP, Council of Administrators of Special Education, Council of Chief State School Officers, National Association of State Directors of Special Education indicated that if online or virtual learning is part of a school closure recommendation, the school district would not be required to amend students' IEPs as online or virtual learning would be considered an alternate mode of instructional delivery.

**4. Can mandated IEP related services be provided through telepractice during Statewide school closures due to Coronavirus?**

Yes. In its March 21, 2020 guidance titled [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#), USDE encouraged the use of teletherapy and tele-intervention as a means to continue to meet the needs of students with disabilities, including English Language Learners with disabilities. The school district should consider telepractice as an option for provision of related services, including bilingual related services, to the extent possible and consistent with privacy interests. During the time period the school district is closed pursuant to NYS Governor Executive Order, school districts are not required to amend students' IEPs if continuing the provision of related services via telepractice is part of a school closure recommendation. Relevant guidance on the provision of related services through telepractice is available on the NYSED Office of the Professions webpage (see [NYS Professions with Telepractice Guidance](#)).

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- 5. During school closures, is a school district of location required to continue to provide special education services to students with disabilities enrolled in nonpublic elementary or secondary schools by their parents?**

Yes. School districts of location must ensure that, to the greatest extent possible, each parentally placed nonpublic school student can be provided the special education and related services identified in the student's individualized education services plan on an equitable basis as compared to other students with disabilities enrolled in the public school with an IEP.

- 6. How should the needs of English Language Learners with disabilities be addressed in accordance with State regulations and best practices in the classroom?**

All students who are identified as English Language Learners with disabilities should, to the extent possible, be provided services in accordance with their IEPs and Part 154 of the Commissioner's regulations.

### **Timelines and Other Special Education Requirements**

- 7. If a school district is having difficulty meeting timelines for evaluations, reevaluations, annual review meetings, due process hearings and resolution sessions, because of Coronavirus, can timelines be extended?**

NYSED will be as flexible as federal and State law and regulation allow and will continue to investigate and inquire about additional flexibility for provision of services for students with disabilities during the outbreak. In its March 21, 2020 guidance titled [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#), the USDE encouraged public agencies, during this emergency, to work with parents to reach mutually agreeable extensions to established timelines, as appropriate.

### **Evaluations and Reevaluations**

Committees on Special Education and Preschool Special Education (hereinafter referred to as Committee) should continue to work with parents and students with disabilities, including English Language Learners with disabilities but would not be required to meet in person while schools are closed. Evaluations and reevaluations, including bilingual evaluations, that do not require face-to-face assessments or observations may take place while schools are closed, if the parent consents. If an evaluation of a student with a disability requires a face-to-face meeting or observation, the evaluation would need to be delayed until school reopens. A reevaluation may be conducted by reviewing existing evaluation data. This review may occur without a meeting and without obtaining parental consent, unless it is determined that additional assessments are needed.

School districts having difficulty meeting timelines for initial evaluations or reevaluations may wish to create a template document to assist school personnel in documenting decisions made, why timelines were exceeded, and documentation of



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parent participation and consent through temporary alternate methods, such as email or notes.

**Annual Reviews**

As indicated above, Committees would not be required to meet in person while schools are closed. When conducting Committee meetings, the parent of a student with a disability and a school district may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls.

**Resolution Sessions**

During these exceptional circumstances, NYSED asks that parties be accommodating of emergency factors that may interfere with the ability to participate in a resolution session. If a parent is unable to participate in a resolution session due to the Coronavirus pandemic, even with the use of alternate means of participation, in accordance with the March 21, 2020 guidance issued by USDE, the school district and parent are not prohibited from mutually agreeing to an extension of the resolution period.

**Due Process Hearings**

NYSED recognizes timelines for due process may not be a priority for school district's or parents during this unprecedented health crisis. To the extent possible, due process timelines should continue to be met with the use of hearings by telephone and testimony by affidavit see (8 NYCRR section 200.5 [j][3][xii] of the Commissioner's Regulations). If this is not possible, extensions should be granted in accordance with [8 NYCRR §200.5\(j\)\(5\)\(i\) of the Commissioner's Regulations](#) at the request of either the school district or parent.

**8. Can the 60-day timeline for providing a final written response to State complaints be extended?**

Yes. Consistent with the March 21, 2020 [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#) provided by USDE, a state may be able to extend the 60-day timeline, without agreement of both parties, in exceptional circumstances. USDE indicated that the Coronavirus pandemic could be deemed an exceptional circumstance if a large number of State Educational Agency staff are unavailable or absent for an extended period of time.

**9. In the event that a school is closed, would a Committee be required to meet in person to amend a student's IEP?**

No, provided the parent and school district agree. The parent and the school district may agree not to convene a Committee meeting for the purposes of making changes to a student's IEP after an annual review, and instead may develop a written document to amend or modify the student's current IEP. In addition, when conducting



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Committee meetings, the parent and school district may agree to use alternative means of participation, such as video conferences and conference calls.

**10. Is there any flexibility regarding required Committee membership?**

Yes, with parent and school district written consent. If a Committee member's area of service will be discussed or modified at a meeting, but the individual is not able to participate in the meeting, the parent and the district may consent in writing to excuse the individual from all or a portion of the meeting.

**11. Can communication with parents regarding their child's IEP services be done electronically?**

Yes, provided the parent and school district agree. School districts should develop a protocol to communicate proactively with parents and guardians regarding their child's IEP services in their language or mode of communication, unless it is clearly not feasible to do so (including as appropriate the use of real time translation via conference call or video conference for parents of English Language Learners with disabilities). Under federal and State law and regulation, parents may elect to receive prior written notices, procedural safeguards notices, and due process complaint notices by electronic mail communication, if the school district makes that option available. Nothing would prohibit the use of electronic mail to carry out administrative matters, so long as the parent of the student with a disability and the school district agree. School districts may also use electronic or digital signatures for consent, provided they take the necessary steps to ensure that there are appropriate safeguards to protect the integrity of the process. A parent must understand and agree to the carrying out of the activity for which consent is sought.

**Nonpublic schools with an approved special education program (853 schools), State-supported schools (4201 schools), State-operated schools, and Special Act School Districts****12. Can a nonpublic school with an approved special education program, State-supported school, State-operated school, Special Act school district bill for a student's tuition if the school is closed or a student is absent due to Coronavirus?**

Yes. Nonpublic schools with approved special education programs, State-supported Schools, Special Act School Districts are authorized, pursuant to NYS Education Regulation section 175.6, to charge for educational placements based on enrollment. Schools should continue to bill their authorized tuition rate and per pupil charge for enrolled students during the period their school program is closed due to COVID-19, or period in which they provide distance learning due to COVID-19, as applicable. Please see the [\*NYSED Guidance to Approved Special Education Schools Regarding Novel Coronavirus and Executive Order 202.4.\*](#)

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- 13.If a nonpublic school with an approved special education program, State-supported school, State-operated school, Special Act school district is unable to operate for 180 session days for the 10-month period pursuant to section 200.7(b)(5), can NYSED waive this requirement?**

Any day that a school had been previously scheduled to be open but is closed pursuant to [Executive Orders 202.4 and 202.11](#) shall be waived from the 180-day requirement for the period starting on March 18, 2020 through April 14, 2020. The State shall reassess at that time whether to extend such closure beyond this date. Please see the [NYSED Guidance to Approved Special Education Schools Regarding Novel Coronavirus and Executive Order 202.4](#).

- 14.In the event of the closure of a nonpublic school with an approved special education program, State-supported school, State-operated school, Special Act school district, is the school required to notify the student's placing entity (i.e., district of residence or county)?**

Yes. The school should notify the placing school district and/or county. Schools must also report closures to NYSED, please see the [NYSED Guidance to Approved Special Education Schools Regarding Novel Coronavirus and Executive Order 202.4](#).

### **Preschool Students with Disabilities**

- 15.What guidelines should an approved preschool special education program follow regarding school closure and health and safety precautions pertaining to the Coronavirus?**

Preschool special class and special class in an integrated setting programs (SCIS) licensed by the NYS Office of Children and Family Services (OCFS) or the New York City (NYC) Department of Health and Mental Hygiene (DOHMH) must follow the direction of their licensing agencies. Relevant guidance from those agencies may be found at NYS OCFS's [Division of Child Care Services webpage](#) and [NYC DOHMH's Coronavirus webpage](#). For those approved preschool special class or SCIS programs not licensed by either NYS OCFS or NYC DOHMH, please see the guidance applicable to nonpublic schools on NYSED's [Coronavirus \(COVID-19\) webpage](#).

- 16.Can mandated IEP preschool related services be provided through telepractice during Statewide school district closures due to Coronavirus?**

Yes. In its March 21, 2020 guidance titled [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#), USDE encouraged the use of teletherapy and tele-intervention as a means to continue to meet the needs of students with disabilities. The school district should consider telepractice as an option for provision of related services, to the extent possible and consistent with privacy interests. During the time period the school district is closed pursuant to NYS Governor Executive Order, school districts are not required to amend students' IEPs if the school district recommends continuing the provision of related services via telepractice. Relevant guidance on the

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provision of related services through telepractice is available on the NYSED Office of the Professions webpage (see [NYS Professions with Telepractice Guidance](#)). During the period of time the student's school district of residence was previously scheduled to be open but is closed pursuant to Executive Order, providers will be reimbursed for provision of related services through teletherapy at the same rate as if the related services were provided in person to the preschool student with a disability.

**17. Can alternate methods of instruction be used to provide IEP mandated SEIS during Statewide school district closures due to Coronavirus?**

Yes. The continued provision of FAPE may include, as appropriate, special education services provided virtually, online, or telephonically (see March 21, 2020 guidance titled [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#)). The school district should consider distance instruction as an option for provision of SEIS, to the extent possible and consistent with privacy interests. During the time period the school district is closed pursuant to NYS Governor Executive Order, school districts are not required to amend students' IEPs if the school district recommends continuing the provision of SEIS via distance learning. During the period of time the student's school district of residence was previously scheduled to be open but is closed pursuant to Executive Order, providers will be reimbursed for provision of SEIS through distance learning at the same rate as if the services were provided in person to the preschool student with a disability.

**18. Can an approved preschool special class or SCIS program bill for a student's tuition if the program is closed or a student is absent due to Coronavirus?**

Yes. An approved preschool special class or SCIS program can continue to bill for tuition costs for a student's period of enrollment in accordance with the requirements of [section 175.6 \(a\)\(1\)\(2\) of the Regulations of the Commissioner of Education](#). Please see the [NYSED Guidance to Approved Special Education Schools Regarding Novel Coronavirus and Executive Order 202.4](#).

**19. If an approved preschool special class or SCIS program is unable to operate for 180 days for the 10-month period pursuant to section 200.7(b)(5), can NYSED waive this requirement?**

Any day that a program had been previously scheduled to be open but is closed pursuant to [Executive Orders 202.4 and 202.11](#) shall be waived from the 180-day requirement for the period starting on March 18, 2020 through April 14, 2020. The State shall reassess at that time whether to extend such closure beyond this date. Please see the [NYSED Guidance to Approved Special Education Schools Regarding Novel Coronavirus and Executive Order 202.4](#).

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**20. How will fee for service programs (i.e., SEIS, related services, and multidisciplinary evaluations) be reimbursed if the services cannot be delivered due to program closures or student or provider absences?**

Preschool special education programs and services that are paid on a fee for service basis are not currently authorized to bill for services not provided.

**21. In the event of the closure of an approved preschool special education program, is the provider required to notify the student's district of residence and municipality in which the preschool student resides?**

Yes. The provider should notify the student's district and municipality of residence. Approved preschool special class and special class in an integrated setting must also report program closures to NYSED (see [NYSED Guidance to Approved Special Education Schools Regarding Novel Coronavirus and Executive Order 202.4](#)).